

ORDER NO. 2260

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service Competitive Contract 3  
(MC2011-21)  
Negotiated Service Agreement

Docket No. CP2013-59

ORDER APPROVING CONTINGENCY PRICING ARRANGEMENT

(Issued November 26, 2014)

I. INTRODUCTION

The Postal Service seeks to include a contingency pricing arrangement (Pricing Arrangement) pursuant to an International Business Reply Service Competitive Contract 3 (IBRS 3) agreement (Agreement) within the IBRS 3 product.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

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<sup>1</sup> Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 14, 2014 (Notice). The Commission approved the Agreement in Order No. 1698, Order Approving New International Business Reply Service Competitive Contract 3 Agreement, April 15, 2013 (Order No. 1698).

## II. BACKGROUND

Agreements included within the IBRS 3 product permit U.S.-based businesses selling lightweight articles in foreign countries to offer their customers a convenient method of returning the articles to the United States for recycling, refurbishment, repair, or other value-added processing. The businesses supply postage-prepaid IBRS packaging to their foreign customers to return the used or defective articles. Pursuant to an IBRS 3 agreement, the businesses pay the Postal Service a negotiated price for each returned article. An IBRS 3 agreement may also include a contingency clause allowing for modification of rates. See Order No. 1698 at 5.

On November 14, 2014, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service states that the Pricing Arrangement occurs under a surviving term of the Agreement, which expired May 31, 2014. Notice at 2. It further states that the Commission directed the Postal Service to file rate changes occurring as the result of such contingency with the Commission and to provide at least 15 days' advance notice of the change in rates. *Id.*

The Postal Service asserts that the Agreement is functionally equivalent to the IBRS 3 baseline agreement and requests that the Agreement be added to the existing IBRS 3 product. Notice at 2-3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the IBRS 3 product, a copy of a notice to the customer concerning the price adjustment, the Pricing Arrangement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that redacted portions of the Agreement, customer-identifying information, and related financial information remain under seal.<sup>2</sup> *Id.* Attachment 4.

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<sup>2</sup> In its application for non-public treatment of materials, the Postal Service invokes the ten-year period for protection in Commission rule 3007.30. *Id.* at 7.

The Agreement is intended to take effect December 1, 2014. Notice at 3. It is intended to remain in effect unless modified by the Postal Service. *Id.*

In Order No. 2252, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.<sup>3</sup>

### III. COMMENTS

The Public Representative filed comments on November 25, 2014.<sup>4</sup> No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative notes "the evident differences" between the original and contingency prices, but concludes that the Pricing Arrangement remains functionally equivalent to the baseline agreement. PR Comments at 3. He also states that it appears the contingency prices shall generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.*

### IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the IBRS 3 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

*Contingent prices.* Contingent pricing arrangements, like the one under consideration here, typically provide the Postal Service with the flexibility to change

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<sup>3</sup> Notice and Order Concerning International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, November 18, 2014 (Order No. 2252).

<sup>4</sup> Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, November 25, 2014 (PR Comments).

rates without the need to enter into an entirely new agreement. In Order No. 684<sup>5</sup>, the Commission determined that the Postal Service, when exercising this type of contingent pricing provision, must comply with Commission rules by filing the changed rates with the Commission in conformity with 39 C.F.R. § 3015.5. The Commission reiterated this condition in Order No. 1698. Order No. 1698 at 6. The Commission finds that the Postal Service's filing is consistent with both directives.

The Commission further finds that the Pricing Arrangement, notwithstanding its expired status, specifically permits contingency price changes. The Commission also agrees with the Postal Service's observation "that the instant contingency prices are likely to apply to an extremely small number of postal items, due to the mailer's profile and the passage of time since the contract's expiration." Notice at 3.

*Functional equivalence.* In Order No. 684, the Commission added IBRS 3 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the IBRS Competitive Contract 3 product. Order No. 684 at 6. In Order No. 1698, the Commission found that the Agreement, which includes a contingent pricing clause, was functionally equivalent to the baseline agreement. Order No. 1698 at 5. A review of the Pricing Arrangement, which reflects the Postal Service's exercise of a contingency clause in the previously-approved Agreement, leads to the conclusion that it is consistent with the Commission's finding of functional equivalence in Order No. 1698.

*Cost considerations.* The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Pricing Arrangement should cover its attributable costs. The addition of the Pricing Arrangement to the IBRS 3 product will not cause cost coverage for the product to fall below 100 percent, because, as the Commission found in the FY 2013 Annual

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<sup>5</sup> See Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011 (Order No. 684).

Compliance Determination (ACD), the product as a whole covers its attributable costs.<sup>6</sup> Consequently, the Commission finds that the addition of the Pricing Arrangement to the IBRS 3 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Pricing Arrangement to the IBRS 3 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Pricing Arrangement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Pricing Agreement to the IBRS 3 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Pricing Arrangement indicates it is consistent with section 3633(a). The Commission will review the Pricing Arrangement's cost coverage, the cost coverage of the IBRS 3 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Other considerations.* The Pricing Arrangement is to remain in effect unless the Postal Service chooses to modify the rates. Notice at 3. Any future rate modification pursuant to the contingency clause in the Agreement is to be filed in conformity with 39 CFR 3015.5.

The Postal Service shall promptly notify the Commission of the effective date of the Pricing Arrangement. Upon termination of the Pricing Arrangement by either party, the Postal Service shall promptly inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Pricing Arrangement, the Postal Service shall file costs, volumes, and revenues associated with the Pricing Arrangement.

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<sup>6</sup> Docket No. ACR 2013, Annual Compliance Determination Report, March 27, 2014, at 86-91.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Pricing Arrangement filed in Docket No. CP2013-59 is included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the Pricing Arrangement.
3. The Postal Service shall promptly notify the Commission of the date of termination of the Pricing Arrangement.
4. Within 30 days of the termination of the Pricing Arrangement, the Postal Service shall file costs, volumes, and revenues.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products**

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#### **2500                      Negotiated Service Agreements**

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#### **2515                      Inbound International**

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#### **2515.3                    International Business Reply Service (IBRS) Competitive Contracts**

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#### **2515.3.5                Products Included in Group (Agreements)**

Each product is followed by a list of agreements included within that product.

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- International Business Reply Service Competitive Contract 3

*Baseline Reference*

Docket Nos. MC2011-21, CP2011-59

PRC Order No. 684

*Included Agreements*

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CP2013-59, expires TBD

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